

BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition
to Revoke Probation Against:

STEPHEN J. NAHIGIAN, DDS

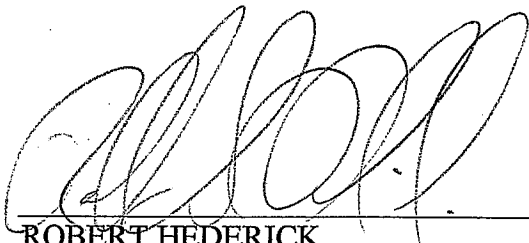
Respondent.

AGS 2003-18
OAH No. L2003090689

DECISION

The attached Proposed Decision hereby becomes, by operation of law, the
Decision and Order of the Dental Board of California in the above-entitled matter.

This Decision shall become effective on December 31, 2005.



ROBERT HEDERICK
EXECUTIVE OFFICER
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

AGS 2003-18

STEPHEN J. NAHIGIAN, D.D.S.

OAH No. L2003090689

License No. 28051

Respondent.

**ORDER EXTENDING TIME FOR
ISSUANCE OF A DECISION AFTER NON-ADOPTION**


TO ALL PARTIES:

On May 5, 2005, the Dental Board of California (Board) declined to adopt the Proposed Decision rendered April 11, 2005, and issued a Notice of Non-Adoption of Proposed Decision. The transcript in the above-captioned matter was received by the Board on July 12, 2005.

YOU ARE HEREBY NOTIFIED that pursuant to Government Code §11517(c)(2)(E)(iv), based on special circumstances, the time for issuance of a Decision After Non-Adoption shall be extended for 30 days to give the Board an adequate opportunity to obtain a quorum to meet and consider the matter.

For the above-stated reason, the Board's Decision After Non-Adoption shall be rendered on or before November 19, 2005.

Dated: 10-6-05


GEORGETTA COLEMAN-GRIFFITH
INTERIM EXECUTIVE OFFICER
DENTAL BOARD OF CALIFORNIA

BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and
Petition to Revoke Probation Against:

STEPHEN J. NAHIGIAN, D.D.S.
23440 Civic Center Way, Suite 201
Malibu, CA 90265

Respondent

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) Case No. AGS 2003-18
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) OAH No. L2003090689
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NOTICE OF NON-ADOPTION OF PROPOSED DECISION

TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the DENTAL BOARD OF CALIFORNIA voted to non-adopt the proposed decision of the Administrative Law Judge in the above captioned case. Pursuant to Government Code §11517(c), the Board, after review of the transcript, will develop its own decision.

You will have an opportunity to present written argument to the Board and will be notified in writing of the final filing date. Written argument should be directed to the issue of whether the penalty should be increased. Written argument should be limited to the facts as presented in the record (transcript and exhibits).

For its own use the Board has ordered the preparation of the hearing record. You will be provided a copy of the record at the time of notification of the final filing date for written argument.

Dated: 6.6.05

DENTAL BOARD OF CALIFORNIA


GEORGETTA COLEMAN-GRIFFITH
Interim Executive Officer

BEFORE THE
DENTAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation
and Petition to Revoke Probation Against:

STEPHEN J. NAHIGIAN, D.D.S.
23440 Civic Center Way, Suite 201
Malibu, California 90265

Respondent.

Case No. AGS 2003-18

OAH No. L2003090689

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California, on February 3 and 4, 2005.

Terrence M. Mason, Deputy Attorney General, represented Cynthia Gatlin (complainant.)

Norman L. Schafler, Attorney at Law, represented respondent.

Complainant seeks to discipline respondent's license based on allegations respondent suffered three alcohol-related convictions; used alcohol to an extent or in a manner dangerous or injurious to himself and others; and violated an existing disciplinary order. Respondent did not contest most of the allegations, but presented evidence in mitigation and rehabilitation in support of retaining his license.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of written closing argument. Complainant submitted a Closing Brief on February 24, 2005, and a Rebuttal Brief to Respondent's Reply Brief on March 23, 2005, which documents have been marked as Exhibits 24 and 25, respectively. Respondent filed a Closing Argument on February 23, 2005, and a Reply to Claimant's Closing Argument on March 9, 2005, which documents have been marked as Exhibits G and H. Additional evidence pertaining to costs was submitted with Exhibit 24, which materials, and Exhibits 21 and 22 (prior cost declarations) are also received in light of this evidence. The matter was submitted for decision on March 23, 2005.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer of the Dental Board of California (Board).

2. On May 11, 1979, the Board issued Dental License number 28051 to respondent. The license has been in effect since that time. It expires on September 30, 2006, unless renewed.

3. a. On May 30, 2000, the Board issued a Decision disciplining respondent's license, effective June 30, 2000. The discipline was based on evidence presented at a six-day hearing in June 1999 before Administrative Law Judge Carolyn Dee Magnuson.

b. Judge Magnuson made the following pertinent findings: on June 1, 1997 and October 26, 1997 respondent ingested controlled substances that he was not legally entitled to possess, i.e., Vicodin and Darvon respectively; on August 3, 1997 and on October 26, 1997, respondent drank alcohol excessively, and the use of alcohol on those occasions resulted in respondent's losing consciousness and requiring hospitalization; the events of June 1, August 3, and October 26, are not isolated, but are evidence of a long-standing pattern of substance abuse; after the October occurrence, respondent successfully completed a six-month in-patient drug rehabilitation program; in the spring of 1998, respondent entered the Board's diversion program and was in compliance with its terms and conditions; respondent, however, denied he was an alcoholic, a very troubling denial; in the existing circumstances, it was appropriate to allow respondent to continue to practice dentistry subject to terms and conditions.

c. The Board revoked respondent's license and stayed the revocation for four years on various terms and conditions that included the following:

"1. Obey All Laws – Respondent shall comply with all conditions of probation and obey federal, state and local laws and all rules and regulations governing the practice of dentistry in California.

"11. Diversion Program – Within 30 days of the effective date of this Decision, respondent shall contact, in writing, the Program Manager of the Board's Diversion Program to schedule an assessment and evaluation by the Diversion Evaluation Committee (DEC). If the DEC determines that respondent is not appropriate for the program, this condition will have been met. If accepted into the program, respondent shall fully comply with the terms and conditions of treatment as prescribed by the DEC. Any costs incurred will be the responsibility of respondent. Failure to successfully complete the DEC treatment program shall constitute a violation of probation.

"13. Abstain from the Use of Alcohol & Drugs – For the entire term of probation respondent shall abstain from all use and possession of alcohol, controlled substances, and dangerous drugs unless legally prescribed for medically or dentally diagnosed health reasons for a bona fide illness or medical/dental condition."

4. Respondent is a board-certified oral surgeon who routinely performs complex surgical procedures. Three dentists who have each known respondent at least 15 years, Kriss M. Haig, James A. Haljun, and Allan Pfiffer (Pfiffer), testified in glowing terms about respondent's skill and compassion for patients. They all referred patients to him and never received anything but positive comments about the care received.

5. a. On July 12, 2002, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, in case number 2SM00495, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a) (driving a vehicle while under the influence of alcohol or drugs), a misdemeanor. The Court suspended imposition of sentence and placed respondent on summary probation for five years on terms and conditions that included service of 30 days in house arrest, payment of \$1,109 in fines and fees, and completion of an alcohol and drug counseling program for multiple offenders.

b. The facts and circumstances surrounding the conviction are that on January 23, 2002, respondent was found in his vehicle, which was stopped in the middle of the street. He was unable to complete any of the field sobriety tests and his blood alcohol content was measured as 21% and 22% on successive breathalyzer tests.

6. a. On July 12, 2002, in the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, in case number 2SM01323, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23103 (reckless driving), a misdemeanor. The Court suspended imposition of sentence and placed respondent on summary probation for two years on terms and conditions that included payment of \$731 in fines and fees, and completion of the alcohol and drug counseling program ordered in connection with case number 2SM00495 (set forth in factual finding number 5).

b. The facts and circumstances surrounding the conviction are that on April 1, 2002, respondent overturned his vehicle after hitting three parked, unoccupied vehicles. His blood alcohol content was .09%.

7. a. On February 23, 2003, in the Municipal Court of Airport Branch Judicial District, County of Los Angeles, State of California, in case number 2WL03503, respondent was convicted, on his plea of guilty, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content higher than .08), a misdemeanor. The Court suspended imposition of sentence and placed respondent on summary probation for five years on terms and

conditions that included service of 180 days in county jail, payment of \$1,450 in fines and fees, forfeiture of his vehicle, revocation of the driving privilege for 36 months, and completion of an 18-month alcohol and drug counseling program.

b. The facts and circumstances surrounding the conviction are that on October 23, 2002, respondent was found by police officers slumped over the steering wheel of his vehicle, which was parked in a public parking lot with its motor running. He was unable to stand on his own and his blood alcohol content was measured at 24% and 26%.

8. The convictions set forth in factual finding numbers 5, 6, and 7, taken together, reflect the lack of sound professional and personal judgment that to a substantial degree evidences present or potential unfitness to perform the duties of a dentist. The convictions, therefore, are substantially related to the qualifications, duties and functions of a dentist under California Code of Regulations (CCR), title 16, section 1019.

9. Respondent testified that he had suffered relapses in his rehabilitation process, which led to the convictions. The initial triggering event was learning in October 2001 that his second wife was having an affair. A bitter, contested divorce followed in which custody of the couple's three children was a significant point of contention.

10. Respondent did not sleep for three days after learning about his wife's affair. Respondent felt he could not safely discharge his work duties and cancelled his dental appointments. By early 2002, his depression and use of alcohol were such that respondent arranged for a colleague to care for his patients and thereafter sold the practice.

11. Respondent is currently on criminal probation and complying with its terms and conditions. He served approximately four months in county jail. He completed the mandated 18-month alcohol and substance abuse program on August 3, 2004. As part of the program he was required to attend 38 Alcoholics' Anonymous meetings and attended 137 meetings.

12. On January 9, 2003, the Board's diversion program dismissed respondent for failure to derive benefit.

13. Respondent has a long history of substance abuse and failed rehabilitation attempts. He started drinking alcoholic beverages in 1972, while in college, and, by his own admission, started abusing them by 1992 or 1993. He voluntarily entered the Board's diversion program in 1993, where he remained in compliance with the terms of the program until the 1997 incidents. He re-entered the diversion program as a condition of probation, until his dismissal in January 9, 2003. He sought help from Creative Care, an in-patient program in Malibu, California, in November 2001, and resided at Michael's House, a sober living facility, from April 1 to July 5, 2002. He has completed two court-ordered rehabilitation programs, the last one in August 2003. His epiphany, however, occurred after 4 months in jail for his last conviction.

14. Respondent has remained clean and sober for over two years. He regularly attends Alcoholics Anonymous meetings, although no longer required to do so as part of his criminal probation; he now finds the meetings to be a source of comfort and support. Respondent recognizes he will always have to attend the meetings to deal with his substance abuse problem. He also recognizes that neither alcoholic beverages nor controlled substances will solve his problems.

15. Since 1993, respondent has also intermittently obtained treatment from Gerald I. Rozansky, M.D., a psychiatrist. Dr. Rozansky wrote in a letter dated January 13, 2004, stating that respondent has suffered significant personal and job-related losses in prestige and self-esteem, yet has remained sober. In his opinion, respondent "appears to have awakened from his self destructive disease." He currently sees Dr. Rozansky every three to six months, as needed.

16. Respondent's personal life has stabilized. He has joint custody of his children, now 7, 9, and 11 years of age respectively, and they spend time in his home. He was engaged to be married in March 2005.

17. Respondent returned to the practice of dentistry approximately two years ago, performing oral surgery in the office of Dr. Pfiffer. Dr. Pfiffer, also a recovering alcoholic, has known respondent for approximately 20 years and used to refer patients to respondent. He described respondent as the best oral surgeon with whom he has ever worked and felt respondent deserved another opportunity. Dr. Pfiffer has observed respondent perform both complex and simple procedures over the past 20 years. In his opinion, respondent has retained all his skill, but now possesses greater humility. Dr. Pfiffer has not suspected respondent of being under the influence of drugs or alcohol during their more recent association.

18. Ana Avalos, who has known respondent for approximately 12 years, has worked with him as an oral surgery assistant, first in respondent's practice and now in Dr. Pfiffer's office. She never observed or suspected respondent of using drugs or alcohol while at work. Respondent always took the time to explain the procedures to the patients and they always seemed happy with the care received.

19. Respondent is also pursuing other professional endeavors. He has completed one year of a two-year abbreviated law school curriculum.

20. The Board incurred a total of \$13,728 in costs of investigation and enforcement in this matter: \$1,536.84 in investigative charges; \$443 in legal assistant charges; and \$11,749 in Deputy Attorney General charges.¹ These costs are found to be reasonable.

¹ These costs include those of Deputy Attorney General Mason through the hearing. They do not include those of Deputy Attorney General Glynda Gomez, which were not subject of the initial certificate of costs and which recovery complainant is not seeking.

21. Except for those previously addressed in this Decision, all other allegations in the Accusation and Petition to Revoke Probation, and all other arguments and contentions by the parties, are found to be unproved or lacking in merit.

LEGAL CONCLUSIONS

1. Business and Professions Code² section 1670 authorizes the Board to discipline the license of any dentist found to have engaged in unprofessional conduct.

2. Cause exists to discipline respondent's license for unprofessional conduct pursuant to sections 490, 1670, 1670.1, and CCR, title 16, section 1019 in that he suffered three convictions which, taken together, are substantially related to the qualifications, functions, and duties of a dentist, by reason of factual finding numbers 5 through 8.

3. Cause exists to discipline respondent's license for unprofessional conduct pursuant to sections 1670 and 1681, subdivision (b), in that he used alcoholic beverages to an extent and in a manner dangerous or injurious to himself and others, by reason of factual finding numbers 5 through 7.

4. Cause exists to discipline respondent's license for unprofessional conduct pursuant to sections 1670, and 1681, subdivision (c), in that he suffered multiple alcohol-related convictions, by reason of factual finding numbers 5 through 7.

5. Respondent violated condition number 1 of the Board's May 30, 2000 disciplinary order in that he suffered three alcohol-related criminal convictions, by reason of factual finding numbers 3, 5, 6, and 7.

6. Respondent violated condition number 11 of the Board's May 30, 2000 disciplinary order in that he failed to successfully complete the Board's diversion program, by reason of factual finding numbers 3 and 12.

7. Respondent violated condition number 13 of the Board's May 30, 2000 disciplinary order in that he failed to abstain from alcohol consumption during the probation period, by reason of factual finding numbers 3, 5, 6, and 7.

8. Cause exists to terminate respondent's probation and to imposed the stayed discipline in that respondent violated the terms and conditions of probation, by reason of factual finding numbers 3, 5, 6, and 7 and legal conclusion numbers 5, 6, and 7.

² All further statutory references are to the Business and Professions Code.

9. Cause exists pursuant to section 125.3 to order respondent to reimburse the Board for its reasonable costs of investigation and prosecution of this matter in the amount of \$13,728, by reason of factual finding numbers 3, 5, 6, 7, 8, and 12, and legal conclusion numbers 1 through 8.

10. All evidence presented in mitigation and rehabilitation, as well as that offered in aggravation and lack of rehabilitation, has been considered. On the one hand, respondent's substance abuse problem, and the convictions and other consequences it has engendered, show significant poor judgment over a long period of time. On the other hand, respondent has tried to address the problem over the years and has never let the problem affect patient care. Of significance, prior to his last arrest respondent had never acknowledged the extent of his problem or served significant time in jail. The jail time has triggered a serious and sincere self-examination, which has led respondent to recognize the extent of his alcoholism. He has lost his practice and has handled other stress without turning to alcohol or drugs for assistance. His two-year sobriety record, which has been verified by others, now appears to have the underpinnings to last. In these circumstances, and with the terms and conditions contained in this Decision, respondent will be given one last opportunity to continue to discharge the duties of his chosen profession. The order that follows is thus adequate and necessary for the protection of the public.

ORDER

Dental License number 28051 issued to respondent Stephen J. Nahigian, D.D.S., is revoked, provided, however, the revocation is stayed for seven (7) years on the following terms and conditions:

1. Obey All Laws - Respondent shall comply with all conditions of probation and obey federal, state and local laws and all rules and regulations governing the practice of dentistry in California, and remain in full compliance with any court ordered criminal probation, payments and other requirements.

2. Quarterly Declarations - Respondent shall submit quarterly declarations under penalty of perjury on the Board's Quarterly Report of Compliance forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

3. Probation Surveillance - Respondent shall comply with the Board's probation surveillance program.

4. Interviews - Respondent shall appear in person for interviews with a Board representative upon request at various intervals and with reasonable notice.

5. Change of Address - Respondent shall inform the Board in writing within 15 days of any change of place of practice or place of residence. Respondent shall at all times keep the Board informed of his address of business and residence which shall both serve as addresses of record. Under no circumstances shall a post office box serve as an address of record. Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside California which lasts, or is contemplated to last, more than thirty (30) days.

6. Cost Recovery - Respondent is hereby ordered to reimburse the Board the amount of \$13,728 within 180 days from the effective date of this decision for its investigative and prosecutorial costs up to the date of the hearing. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probationary order, unless the Board or its Executive Officer agrees in writing to payment by an installment plan because of financial hardship. However, full payment must be received no later than one year prior to the scheduled termination of probation.

7. License Surrender - Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily surrender his license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

8. Absence from State/Practice - In the event respondent should leave California to reside or practice outside the State, respondent must provide written notification to the Board of the dates of departure and return. Periods of residence or practice outside of California will not apply to the reduction of the probationary period. In the event respondent ceases to actively practice dentistry in California, respondent must provide written notification of that fact to the Board. The period when the respondent is not practicing will not apply to the reduction of the probationary period. Absence from the state or absence from practice shall not relieve the respondent from fulfilling the conditions of probation requiring reimbursement of costs or restitution to patients or on behalf of patients.

9. Suspension - Commencing from the effective date of this decision, respondent shall be suspended from the practice of dentistry for a period of 90 days. Respondent shall not mislead patients regarding the reasons for suspension from practicing dentistry. During the suspension respondent shall not practice dentistry directly or indirectly, including the supervision of dental auxiliaries, nor shall respondent receive or have set aside for future receipt, any new monies derived from the practice of dentistry as defined by the provisions of Business and Professions Code Section 1625, which includes managing or conducting as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

10. Psychotherapy - Within 60 days of the effective date of this decision, respondent shall submit a proposed therapist and plan of therapy to be approved by the Board. The cost of therapy shall be borne by respondent. The plan of therapy shall include the nature of the treatment and its proposed duration. The psychotherapist shall agree to submit quarterly reports to the Board regarding the progress and participation of respondent. The treatment program shall not be terminated except upon Board approval after submission of the results of the program by the psychotherapist.

11. Diversion Program - Within 30 days of the effective date of this Decision, respondent shall contact, in writing, the Program Manager of the Board's Diversion Program to schedule an assessment and evaluation by the DEC. If the DEC determines that respondent is not appropriate for the program, this condition of probation will have been met. If accepted into the program, respondent shall fully comply with the terms and conditions of treatment as prescribed by the DEC. Any costs incurred will be the responsibility of respondent. Failure to successfully complete the DEC treatment program shall constitute a violation of probation.

12. Biological Fluid Testing - Respondent shall submit to random biological fluid testing at his own expense upon the demand of the Board or its designee.

13. Abstain from the Use of Alcohol & Drugs - For the entire term of probation respondent shall abstain from all use and possession of alcohol, controlled substances, and dangerous drugs unless legally prescribed for medically or dentally diagnosed health reasons for a bona fide illness or medical/dental condition.

14. Continuance of Probationary Term/Completion of Probation - If respondent violates the terms of this probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of respondent's license. If, during the period of probation, an accusation and/or a petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation and/or a petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation and/or the petition to revoke probation has been acted upon by the Board. Upon successful completion of probation, respondent's license will be fully restored.

DATED: 4/14/05



SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

DECISION AFTER NONADOPTION

In the Matter of the Accusation Against Stephen J. Nahigian, D.D.S.

Dental Board Case No. AGS 1997-82